UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA	:	
	:	17 Cr. 415 (PAC)
- against -	:	
	:	**OPINION & ORDER**
Luigi Jaquez,	:	
Defendant.	:	

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Defendant Luigi Jaquez was sentenced by this Court to 70-months imprisonment for his involvement in a 2008 murder that occurred during the course of an attempted Hobbs Act robbery. Jaquez has been incarcerated at the MDC Brooklyn[1] where, to date, he has served approximately 45-months out of his 70-month sentence. He now moves for early release under the Compassionate Release Statute at 18 U.S.C. § 3582(c)(1)(A)(i), arguing that extraordinary and compelling reasons exist due to his certain underlying health conditions that make him particularly vulnerable to the COVID-19 virus. Additionally, he contends that his compassionate release would be consistent with the sentencing factors set forth in 18 U.S.C. § 3553(a). The Government concedes that Jaquez exhausted his administrative remedies and satisfies the requirements for extraordinary and compelling reasons, but that the § 3553(a) factors weigh against a sentence reduction under the Compassionate Release Statute. Upon due consideration of the parties' arguments, the Court **DENIES** the motion.

[1] In an email dated January 13, 2021, the Government notified the Court that Jaquez had been physically transferred from the MDC Brooklyn to his permanent BOP facility.

BACKGROUND

I. Factual Background

In 2008, Defendant Luigi Jaquez's life took a turn for the worst when he participated in a criminal conspiracy with two co-defendants to rob Maximiliano Campusano, a local narcotics dealer.[2] (Presentence Report ("PSR"), at 24, ECF 68.) Jaquez's role in the conspiracy consisted of recruiting two men to commit the robbery and supplying them with a firearm to execute the offense. (*Id.*) The two men Jaquez had recruited subcontracted their work to two other men, who ultimately attempted the robbery and killed Campusano (*Id.*) Jaquez did not intend or expect anyone to be shot during the robbery; but, as is too often the case, the plan backfired when the robbers entered Campusano's apartment and shot the victim to death. (*See id.*; Sent'g Tr. at 25.)

Jaquez was arrested for this offense nearly a decade later in July 2017. (Gov't Opp. Br. at 1.) Facing serious prison time, he promptly entered into a cooperation agreement with the Government and pled guilty to five criminal counts:

- Count One: Aiding and abetting the use of a firearm in the commission of felony murder, in violation of 18 U.S.C. § 924(j)(1);
- Counts Two & Three: Conspiring, and aiding and abetting an attempted Hobbs Act robbery, in violation of 18 U.S.C. § 1951;
- Count Four: Conspiring to distribute narcotics, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A); and

[2] In connection with the same offense, Jaquez's two co-defendants, Karilie Herrera and Sacha Santiago, were sentenced by this Court to 120-months and 35-months, respectively.

- Count Five: Using a gun, which was discharged, during the narcotics conspiracy, in violation of 18 U.S.C. § 924(c)(1)(A)(iii).

(PSR, at 1–2; Gov't Opp. Br. at 1.)

Count One called for a mandatory minimum sentence of five years imprisonment while Counts Four and Five each called for a mandatory minimum of ten years, respectively. (PSR, at 1–2.) In the aggregate, the Sentencing Guidelines exposed Jaquez to 360-months to life imprisonment. (*Id.* at 23.) However, based on his cooperation agreement with the Government and the substantial assistance he had rendered in exposing other related crimes, the Government filed a 5K1.1 motion at sentencing and thereby permitted the Court to entertain a departure from the applicable Guidelines range. (Sent'g Tr. at 26–27.)

The Presentence Report ("PSR") recommended a custodial sentence of 48-months on the grounds that Jaquez had been forthcoming and of substantial assistance to the Government, and because he had been raised, throughout childhood, in a troubled, single-mother household plagued by alcohol abuse. (PSR, at 24–26.) Jaquez advocated for a sentence of time served, which, at that point, amounted to a 37-month sentence.[3] (Sent'g Tr. at 24.) The Government took no position on an appropriate sentence. (*Id.* at 21–22.)

In July 2020, the Court sentenced Jaquez to 70-months imprisonment and five years of supervised release. (*Id.* at 27–28.) The Court took into consideration mitigating factors, namely his troubled upbringing, but nevertheless found that the underlying crime, murder, and Jaquez's involvement, hiring the robbers and providing the firearm, to be an exceedingly serious offense in need of a commensurate sentence. (*Id.* at 25.) ("I have to impose a sentence that reflects the seriousness of that offense. I also have to promote respect for the law. A human life, we're told that human life is very important, that black lives matter, that all lives matter. And here, one was needlessly snuffed out."). In addition, the Court considered Jaquez's extensive criminal history and his demonstrated proclivity towards resorting to a life of crime. (*Id.* at 26.) ("I'm particularly troubled by the fact that Mr. Jaquez returns very quickly to his prior pattern of existence when he is released from his incarceration.") Taking all these circumstances together, the Court concluded that 70-months was "sufficient but not greater than necessary" to achieve the goals of punishment.[4] (*Id.* at 31.)

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[3] Jaquez has been in federal custody since his arrest in July 2017. (Gov't Opp. Br. at 1.)

II. Jaquez's Compassionate Release Motion

In September 2020, Jaquez petitioned the Warden of the MDC Brooklyn for compassionate release, citing the exigent circumstances wrought on by the COVID-19 pandemic. (Jaquez Br. at 5.) The Warden denied the petition approximately three months later.[5] (Gov't Opp. Br. at 2.) In December 2020, he filed his compassionate release motion *pro se* before this Court and shortly thereafter, defense counsel submitted a supplemental brief in support of the motion.[6] Jaquez, who is 31-years old, contends that extraordinary and compelling reasons exist because he suffers from asthma and obesity—two health conditions that accentuate his risk of contracting a severe illness from the COVID-19 virus. (*Pro Se* Br. at 3; Jaquez Br. at 7–10.) He also contends that under the 18 U.S.C. § 3553(a) sentencing factors, the goals of his incarceration have been met, and accordingly, that early release is warranted under the Compassionate Release Statute.[7] (*Pro Se* Br. at 6–7; Jaquez Br. at 11–13.)

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[4] The Court also concluded that a 70-month incarceratory sentence would avoid unwarranted sentencing disparities between Jaquez and his co-defendants, and that his cooperation with the Government, while helpful, "just confirmed what the government already knew." (Sent'g Tr. at 26–27.)

[5] The Government claims that the Warden denied Jaquez's petition in December 2020 (Gov't Opp. Br. at 2) but Jaquez asserts that he has yet to hear back from the Warden about his compassionate release petition. (Jaquez Br. at 5.) The Court does not need to resolve this factual inconsistency because even if what the Government says is true—that the Warden denied the petition in December 2020—30 days would have lapsed between the petition's initial filing and the Warden's denial, thereby satisfying the administrative exhaustion requirement under the Compassionate Release Statute. *See* 18 U.S.C. § 3582(c)(1)(A) (stating that the administrative exhaustion requirement is met where there is a "lapse of 30 days from the receipt of such a request by the warden of the defendant's facility"). In any event, the Government concedes that Jaquez has satisfied the exhaustion requirement under the Compassionate Release Statute.

DISCUSSION

I. Compassionate Release Statute

Under the Compassionate Release Statute, a district court may grant compassionate release where (1) "extraordinary and compelling reasons warrant such a reduction"; (2) "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission"; and (3) upon due consideration of the relevant factors as set forth in section 18 U.S.C. § 3553(a). *See* 18 U.S.C. § 3582(c)(1)(A)(i). In the context of the COVID-19 pandemic, courts have interpreted the "extraordinary and compelling" factor to require a "fact-intensive" inquiry centering "on the defendant's condition, not general societal conditions." *See United States v. Shakur*, No. 82 CR 312 (CSH), 2020 WL 1911224, at *1 (S.D.N.Y. Apr. 20, 2020). Accordingly, courts within this district have considered the defendant's age, *see United States v. Rodriguez*, 16-CR-167 (LAP), 2020 WL 1866040, at *3 (S.D.N.Y. Apr. 14, 2020), the nature and severity of the defendant's health conditions, *see United States v. Zehner*, 19 Cr. 485 (AT), 2020 WL 1892188, at *2 (S.D.N.Y. Apr. 15, 2020), the public health concerns specific to the defendant's prison facility, *see United States v. Simmons*, 15 Cr. 445 (PAE), 2020 WL 1847863, at *1 (S.D.N.Y. Apr. 13, 2020), and the proportion of the defendant's sentence already served. *See United States v. Haney*, 19-cr-541 (JSR), 2020 WL 1821988, at *7 (S.D.N.Y. Apr. 13, 2020). Separately, courts have also considered the sentencing factors under 18 U.S.C. § 3553(a) with a particular emphasis on the seriousness of the offense, the deterrent effect of the punishment, and the need to protect the public.[8] *See, e.g.*, *United States v. Martin*, 18-CR-834-7 (PAE), 2020 WL 1819961, at *3–4 (S.D.N.Y. Apr. 10, 2020).

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[6] For purposes of deciding this motion, the Court considers both Jaquez's *pro se* filing and the supplemental submission made by defense counsel.

[7] Jaquez requests that he be granted compassionate release and allowed to serve the rest of his prison term in home confinement. (Jaquez Br. at 1.)

II. Application

The Government concedes that Jaquez's two underlying health conditions, asthma and obesity, combined with the COVID-19 pandemic, constitute extraordinary and compelling reasons for a sentence reduction under the Compassionate Release Statute. (Gov't Opp. Br. at 2.) Extraordinary and compelling reasons *alone*, however, are insufficient to grant compassionate release; this is especially so here because Jaquez has been moved from the MDC Brooklyn, which means that the conditions there are no longer relevant. Accordingly, the Court must also consult the § 3553(a) factors. *Martin*, 2020 WL 1819961, at *3–4. Because the Court finds that the § 3553(a) factors weigh against compassionate release, Jaquez's motion must be denied.

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[8] To be sure, the Compassionate Release Statute also instructs courts to consider "applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). But following the Second Circuit's decision in *United States v. Brooker*, 976 F.3d 228 (2d Cir. 2020), the Sentencing Commission's policy statement on compassionate release, Guideline 1B1.13, no longer applies to compassionate release motions brought *directly* by inmates. *See id.* at 235–36 ("[W]e read the Guideline [1B1.13] as surviving, but now applying only to those motions that the BOP has made."). Because Jaquez has directly moved for compassionate release, the statutory analysis is thus limited to consideration of extraordinary and compelling reasons, and the sentencing factors contained in 18 U.S.C. § 3553(a). *See id.*

***Seriousness of the Offense*:** Under § 3553(a)(2), the Court must consider the seriousness of the underlying offense. The underlying offense here is very serious: it involves murder. In 2008, Jaquez participated in a violent conspiracy with two co-defendants to rob Campusano at his place of residence. (PSR, at 24.) He played a substantial role in that conspiracy: he recruited two robbers to execute the heist and supplied them with a gun in furtherance of that criminal objective. (*Id.*) He did not intend or contemplate that someone would die as a result of his actions. But someone did and a needless death was suffered. Thus, because these actions constitute serious offenses without justification, the seriousness of the offense factor counsels against granting compassionate release. 18 U.S.C. § 3553(a)(2).

***Deterrent Effect and the Need to Protect the Public*:** According to his submissions, Jaquez asserts that serving time in prison has reformed him of his criminal propensities, and hence, that he no longer presents a danger to the public. (*Pro Se* Br. at 6–7; Jaquez Br. at 13.) To show his rehabilitation, he points to his work with his facility's sanitation crew, his completion of several educational programs, and the help he has provided fellow inmates in preparing for their GED exams.[9] (*Pro Se* Br. at 6; Jaquez Br. at 13.)

These examples, while encouraging, do not persuade the Court that Jaquez no longer poses a danger to the public. (*See* Sent'g Tr. at 26.) As this Court remarked at sentencing[10]:

> Mr. Jaquez has been in and out of jail for the period between 2008 and 2017. None of these sentences and jail terms that he served have changed his behavior, because as soon as he's released, he reverted to his drug-dealing business and his use of guns, when he felt it was appropriate, and the circumstances of conducting

[9] According to the PSR, Jaquez has committed at least three disciplinary infractions (all coming in 2019) while serving his prison term. (PSR, at 5.)

[10] During his last period of liberty after being released from prison in 2015, Jaquez immediately returned to selling narcotics, and on one occasion, discharged a gun at a former friend during a business dispute. (Gov't 5K1.1 Letter at 3.)

> his illegal drug trade. So as I say, these are serious matters and [I] have to promote respect for the law and provide just punishment for the offense.

(*Id.*)

Granting compassionate release, however, when Jaquez has not yet served a substantial majority of his sentence risks undercutting the deterrence and public safety rationales behind § 3553(a). Accordingly, these important sentencing objectives further weigh against compassionate release. *See* 18 U.S.C. § 3553(a)(2).

Unwarranted Sentencing Disparities: Granting compassionate release motion would also incur unwarranted sentencing disparities, in contravention of § 3553(a)(6). According to the PSR, co-defendant Karilie Herrera was the mastermind behind the 2008 robbery scheme that led to Campusano's death, while Sacha Santiago, played a minor role.[11] (PSR, at 24.) The Court sentenced Herrera to 120-months and Santiago to 35-months, respectively.

If the Court were to now grant Jaquez's compassionate release, this would mean that he would effectively be serving a 45-month sentence, which is substantially disproportionate to the 120-months levied on Herrera. (*See* Sent'g Tr. at 31). Herrera may have been the mastermind behind the 2008 conspiracy, but Jaquez rendered comparable contribution by enlisting manpower and supplying the deadly weapon. (PSR, at 24.) Yet to say that Herrera should serve nearly three times the time for a comparable degree of participation in Campusano's death would create the exact kind of sentencing disparity frowned upon by § 3553(a)(6). Because such a sentencing disparity is unwarranted and more fundamentally, unfair, to Jaquez's co-defendants, the sentencing disparity factor weighs against compassionate release.[12]

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[11] In the 2008 attempted robbery, Herrera instructed Santiago and another young woman to visit Campusano at his place of residence, and on their way out, to leave the door open for the robbers to enter. (See Gov't 5K1.1 Letter at 2.) Based on Santiago's limited role and compelling mitigating factors, the Court sentenced her to 35-months. (Santiago Sent'g Tr. at 14, ECF 69.)

***History and Characteristics of the Defendant*:** Finally, § 3553(a) directs the Court's attention to the Defendant's history and characteristics. Jaquez's childhood of being reared in a troubled household, the fact that he has a 10-year-old daughter whom he intends to take custody of upon his release from prison, and the considerably difficult living conditions he has faced due to the COVID-19 pandemic, *see United States v. Franco*, 12 Cr. 932 (PAC), 2020 WL 4344834, at *1 (S.D.N.Y. June 24, 2020), are all mitigating circumstances that evoke compassion for Jaquez's cause and weigh in favor of his early release.[13]

At the same time, though, the equities on the other side of the § 3553(a) equation—such as the seriousness of the underlying offense, the need for further deterrence and public safety, and avoiding sentencing disparities—outweigh these mitigating factors. The simple but dispositive fact remains: someone needlessly died in 2008 as a result of Jaquez's actions. (Sent'g Tr. at 31) ("The fact of the matter is, somebody is dead and there has got to be punishment for all of society.") And since that time, he has cycled in-and-out of prison for crimes that have endangered his community and broken the faith placed in him by past sentencing courts. (*See id.* at 26.) So, cognizant as the Court is of the mitigating factors at play here, it finds that they are insufficient to justify granting compassionate release.

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[12] The Court acknowledges the fact that Herrera, who is currently serving her sentence, may also move for a sentence reduction under the Compassionate Release Statute. The Court does not express any legal or factual position with respect to the merits of such a motion.

[13] Jaquez also cites his mother's declining health as another mitigating factor favoring compassionate release. (Jaquez Br. at 1.) His mother, however, currently resides in the Dominican Republic, (*Pro Se* Br. at 4), so it is unclear how granting Jaquez's request of home confinement in the United States will materially benefit his ability to care for his mother.

Finally, Jaquez's 70-month sentence already represents a substantial reduction from the severe punishment he initially faced without the benefit of a cooperation agreement. The Guidelines initially exposed Jaquez to a sentencing range of 360-months to life imprisonment; and Counts One, Four, and Five of his plea agreement each carried mandatory minimum sentences. However, because of the Government's 5K1.1 motion at sentencing and his personal mitigating circumstances, the Court substantially reduced his sentence to 70-months. Any further reduction at this time would not be consistent with the sentencing factors set forth in § 3553(a) and would be an affront to the loss and grief experienced by the victim's family.[14] Accordingly, upon due consideration of the § 3553(a) factors, the Court concludes that they would not be well served by granting Jaquez's motion for compassionate release.

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[14] During Herrera's sentencing, the Government read the following letter from the victim's family:

> In June 2008 my brother, Maximiliano Campusano, was murdered. Words cannot express the pain, suffering and confusion you feel when a family member is murdered. I can't comprehend why or how someone can take the life of a human being with no regard or even think the effect it may have on others. He lived with my mother until the day he was murdered. It left my mother very depressed. It had a tremendous emotional effect on our mother. No mother should have to bury her son. I'm sorry my poor mother had to. He didn't get the chance to marry or have kids before his murder. When we speak about him we always wonder: What if he was alive? How many kids would he have? Since he loved kids so much. His murder was senseless, and will forever leave a hole in our hearts. Thank you so much.

(Herrera Sent'g Tr. at 12–13, ECF 64.)

CONCLUSION

Jaquez's motion for compassionate release is **DENIED** without prejudice as to its renewal should his health conditions or the status of infections at his facility materially worsen.

Dated: New York, New York
March 8, 2021

SO ORDERED

Paul A. Crotty

PAUL A. CROTTY
United States District Judge